



Peace and Justice Commission

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ACTION CALENDAR
December 18, 2012

To: Honorable Mayor and Members of the City Council
From: Peace and Justice Commission
Submitted by: George Lippman, Chairperson, Peace and Justice Commission
Subject: Proclaim Berkeley a No Drone Zone and Enact an Ordinance to that Effect

RECOMMENDATION

Adopt a Resolution and Proclamation proclaiming:

1. Berkeley a No Drone Zone and instructing the City Attorney to perform the necessary legal tasks to transform this declaration of a No Drone Zone into an Ordinance for the City of Berkeley wherein drones are hereby banned from airspace
2. That drones will not be purchased, leased, borrowed, tested or otherwise used by any agency of the City of Berkeley over the City of Berkeley, including drones in transit.
3. That exemptions will be made for hobbyists to continue to fly remote controlled model aircraft in specified areas, away from dwellings and the urban cityscape of people and buildings as long as those devices are not equipped with any kind of camera or audio surveillance equipment.

Copies of this Resolution shall be sent to Governor Jerry Brown, California Attorney General Kamala Harris, State Senator Loni Hancock, Assemblymember Nancy Skinner, the Alameda County Sheriff, Senator Dianne Feinstein, Senator Barbara Boxer, Representative Barbara Lee, President Barack Obama, the Federal Bureau of Investigation, the Department of Homeland Security, and the Department of Defense.

FISCAL IMPACTS OF RECOMMENDATION

Unknown.

CURRENT SITUATION AND ITS EFFECTS

At its regular meeting on September 10, 2012, the Peace and Justice Commission adopted the following recommendation:

Adopt a Resolution and, by Proclamation, proclaim Berkeley a No Drone Zone, and instruct the City Attorney to perform the necessary legal tasks to transform this declaration of a No Drone Zone into an Ordinance for the City of Berkeley wherein drones are hereby banned from airspace over the City of Berkeley, including drones in transit. Under that Ordinance, flying of a drone within the airspace of the City of Berkeley shall be considered a misdemeanor carrying a maximum penalty of up to one year in jail and a fine not to exceed \$10,000. Each offense that is more than one offense of flying a drone within said airspace will be considered to be an additional misdemeanor, with jail time and fines based on the number of violations.

M/S/C: (Meola/Bohn)

Ayes: Bohn; El-Quolag; Haney, Kenin, Lippman; Meola; Siegel; Sochet

Noes: Maran.

Abstain: None.

Absent: Nicely (unexcused)

RATIONALE FOR RECOMMENDATION

The Peace and Justice Commission, consistent with its mandate to promote peace and justice, locally, nationally and internationally, recommends that the Council support this Resolution and adopt this Proclaiming Berkeley a No Drone Zone banning drones from Berkeley airspace and instructing the City Attorney to present an Ordinance with such a ban for City Council adoption.

ALTERNATIVE ACTIONS CONSIDERED

None.

CITY MANAGER

The City Manager takes no position on the Commission's recommendations or the contents of its Report.

CONTACT PERSON

Robert Meola, Commissioner, Peace and Justice Commission, 510-844-1102

Eric Brenman, Secretary, Peace and Justice Commission, 510-981-5114

Attachments:

1. Resolution (with footnotes and links)
2. Additional Information

RESOLUTION NO. -N.S.

PROCLAIM BERKELEY A NO DRONE ZONE AND ENACT AN ORDINANCE TO
THAT EFFECT

WHEREAS, the Peace and Justice Commission advises the City Council on all matters relating to the City of Berkeley's role in issues of peace and social justice (Berkeley Municipal Code (BMC) Chapter 3.68.070); and

WHEREAS, Berkeley has a history of standing up for peace, justice, civil liberties, and the welfare of people; and

WHEREAS, United States airspace is the busiest in the world, with up to 87,000 flights per day, including commercial airliners and freight haulers, air taxis and private and military aircraft; and

WHEREAS, "Statistics show unmanned aircraft have an accident rate seven times higher than general aviation and 353 times higher than commercial aviation;"¹ and

WHEREAS, Unmanned Aerial Vehicles, also known as Drones, are not now allowed in United States general airspace because of the threat they present to other aircraft and under the Federal Aviation Administration (FAA) Modernization and Reform Act of 2012 the FAA is directed to create regulations that will enable drones to fly throughout United States airspace by September, 2015; and

WHEREAS, small drones, 25 pounds or under, are now permitted to fly in general airspace below 400 feet for the use of police and first responders, with FAA permission; and

WHEREAS, drones have limitations in "vision" compared to the vision of human pilots, do not have the same capability to avoid other aircraft as aircraft piloted by humans, and there has been at least one instance outside the United States of a drone collision with an aircraft with a human pilot on board and another incident, as well, of a near miss and these instances occurred in airspace much less crowded than that of the United States²; and

¹ <http://www.startribune.com/local/163304886.html?refer=v>
Spies in the sky signal new age of surveillance

² http://www.salon.com/2012/05/18/denvers_drone_near_disaster/singleton/German_Army_Luna_UAV_vs_Ariana_Afghan_Airlines_Airbus_A300B4_-_YouTube
Drones Most Accident-Prone U.S. Air Force Craft: BGOV Barometer - Bloomberg

WHEREAS, drones have at times gotten out of human control, in at least one instance having to be shot down³, and drones are susceptible to electronic interference and having control seized electronically by unauthorized operators; and

WHEREAS, drones have the capability of carrying a variety of weapons, including 12-gauge shot guns, tear gas, rubber bullet guns, bombs and missiles, but drones have significant limitations in identifying specific individuals and groups; and

WHEREAS, Unmanned Aerial vehicles (drones) have the capability to watch individuals, groups and populations on a 24-hour basis, following and recording their movements for days and weeks in an unprecedented way; and

WHEREAS, drones have the capability to continuously monitor cell-phone and text messaging of individuals, groups and populations; and

WHEREAS, drones are being developed that will use computerized facial images to target individuals and, once launched, to operate, autonomously, without further human involvement, to locate and kill those individuals; and

WHEREAS, drones would present an unreasonable and unacceptable threat to public safety in the air and to persons and property on the ground in the City of Berkeley, due to limitations in drone "vision", capability to avoid other aircraft and adequate control; and

WHEREAS, armed drones and surveillance drones would present an unreasonable and unacceptable threat to the rights of individual privacy, freedom of association and assembly, equal protection and judicial due process in the City of Berkeley.

NOW THEREFORE BE IT RESOLVED by the Council of the City of Berkeley that the City of Berkeley, with this Resolution and by Proclamation proclaims Berkeley a No Drone Zone, and instructs the City Attorney to perform the necessary legal tasks to transform this declaration of a No Drone Zone into an Ordinance for the City of Berkeley wherein drones are hereby banned from airspace over the City of Berkeley, including drones in transit. Under that Ordinance, flying of a drone within the airspace of the City of Berkeley shall be considered a misdemeanor carrying a maximum penalty of up to one year in jail and a fine not to exceed \$10,000. Each offense that is more than one offense of flying a drone within said airspace will be considered to be an additional misdemeanor, with jail time and fines based on the number of violations.

BE IT FURTHER RESOLVED that drones will not be purchased, leased, borrowed, tested or otherwise used by any agency of the City of Berkeley.

BE IT FURTHER RESOLVED that exemptions will be made for hobbyists to continue to fly remote controlled model aircraft in specified areas, away from dwellings and the

³ Out-of-control drone shot down by US jet plane before it flew into Tajikistan | World news | guardian.co.uk

urban cityscape of people and buildings as long as those devices are not equipped with any kind of camera or audio surveillance equipment.

BE IT FURTHER RESOLVED that copies of this resolution be sent to Governor Jerry Brown, California Attorney General Kamala Harris, State Senator Loni Hancock, Assemblymember Nancy Skinner, the Alameda County Sheriff, Senator Dianne Feinstein, Senator Barbara Boxer, Representative Barbara Lee, President Barack Obama, the Federal Bureau of Investigation, the Department of Homeland Security, and the Department of Defense.⁴

⁴ USAF reports on drone crashes that likely would not have happened had there been a pilot on board. This is just from skimming crash reports, and there likely are more.

http://usaf.af.mil/ExecSum2011/MQ-1B_AOR_ExecSum_%205%20May%2011.pdf
http://usaf.af.mil/ExecSum2010/MQ9A_31%20Aug%2010.pdf

ADDITIONAL DRONE ARTICLES RELEVANT TO A BERKELEY NO DRONE ZONE

<http://www.wired.com/threatlevel/2012/08/faa-documents-raise-questions-about-safety-of-drones-in-u-s-airspace/all/>

<https://www.eff.org/deeplinks/2012/06/help-eff-find-out-how-your-local-police-agency-using-drones>

http://www.slate.com/blogs/future_tense/2012/07/03/auvsi_issues_domestic_drone_code_of_conduct.html

http://www.washingtonpost.com/world/national-security/drone-operations-over-somalia-pose-danger-to-air-traffic-un-report-says/2012/07/24/gJQALvnf7W_story.html

<http://usahilman.com/nycndz/> NY Claiming 'No Drone Zone', Hopefully More States Will Follow

http://www.salon.com/2012/06/12/hatred_what_drones_sow/

http://www.salon.com/2012/06/19/drones_sour_debt_and_polio/singleton/

http://www.salon.com/2012/06/14/rand_paul_stop_the_drones/singleton/The Kentucky senator wants to curb unmanned flights, but the Air Force tells Salon about its plans to expand them

http://www.salon.com/2012/06/07/un_rights_chief_calls_for_drone_probe/singleton/

http://www.salon.com/2012/06/05/electing_an_assassin_in_chief/singleton/

http://www.salon.com/2012/06/01/another_right_wing_drone_skeptic/singleton/

http://www.salon.com/2012/05/31/losing_yemeni_hearts_and_mind/singleton/

http://www.salon.com/2012/05/30/states_fight_for_drone_biz/singleton/

http://www.salon.com/2012/05/29/the_face_of_collateral_damage/singleton/

http://www.salon.com/2012/05/21/who_will_drones_target_who_in_the_us_will_decide/singleton/

http://www.salon.com/2012/05/22/drones_new_weapon_p_r/singleton/

http://www.salon.com/2012/05/17/conservatives_turn_on_drones/singleton/Right-wing writers, from Charles Krauthammer to Matt Drudge, join the left in criticizing domestic drone use

http://www.salon.com/2012/05/15/faa_approves_bigger_drones/singleton/The FAA has decided to allow larger drones to fly in U.S. airspace

http://www.salon.com/2012/05/10/drone_war_defensive/singleton/

[http://www.salon.com/2012/05/08/fear_the_zombie_drone/singleton/How do you safely launch thousands of new aircraft into already crowded skies? The safety concerns of domestic UAVs](http://www.salon.com/2012/05/08/fear_the_zombie_drone/singleton/How_do_you_safely_launch_thousands_of_new_aircraft_into_already_crowded_skies?_The_safety_concerns_of_domestic_UAVs)

[http://www.salon.com/2012/05/01/drones_on_campus/singleton/Universities are buying drones faster than police departments -- and the military is helping foot the bill](http://www.salon.com/2012/05/01/drones_on_campus/singleton/Universities_are_buying_drones_faster_than_police_departments_-_and_the_military_is_helping_foot_the_bill)

http://www.salon.com/2012/04/30/drone_victims_defender_speaks/singleton/
[http://www.salon.com/2012/04/24/drones_for_urban_warfare/singleton/Manufacturers are targeting U.S. police forces for sales. as drones move from the Middle East to Main Street](http://www.salon.com/2012/04/24/drones_for_urban_warfare/singleton/Manufacturers_are_targeting_U.S._police_forces_for_sales._as_drones_move_from_the_Middle_East_to_Main_Street)

http://www.salon.com/2012/04/19/petraeus_and_the_signature_of_u_s_terror/singleton/

http://www.salon.com/2012/04/05/air_force_ramps_up_drone_war/singleton/

http://www.salon.com/2011/12/05/in_iowa_occupiers_picket_a_drone_factory/singleton/

http://articles.nydailynews.com/2012-06-17/news/32285738_1_drones-unmanned-aerial-vehicles-faa

http://www.washingtonpost.com/world/national-security/drone-operations-over-somalia-pose-danger-to-air-traffic-un-report-says/2012/07/24/gJQALvnf7W_story.html

http://articles.nydailynews.com/2012-06-17/news/32285738_1_drones-unmanned-aerial-vehicles-faa

<http://www.gao.gov/assets/650/648348.pdf> UNMANNED AIRCRAFT SYSTEMS



The domestic use of drones has been steadily expanding. >

Look up in the sky and see a drone

MALOU INNOCENT AND MEDEA BENJAMIN

Sunday, June 17, 2012

Ready or not, drones are coming to a law enforcement agency near you.

Unmanned Aerial Vehicles, or drones, have been primarily used for surveillance and targeted killings in wars in faraway lands. Now, with apparently minimal debate, local police departments have begun using them for surveillance directed at American citizens.

To us, this is a grim illustration of the post-9/11 militarization of America. While drones can serve valid purposes, like monitoring forest fires, surveying land and search-and-rescue missions, they pose a threat to our freedoms.

Their domestic use should be strictly controlled, and current legal standards updated to reflect this powerful new technology.

Instead, it has been authorized largely outside the public eye.

The Federal Aviation Administration began issuing permits for the domestic experimental use of drones in 2006. A lawsuit by the Electronic Frontier Foundation forced the FAA to start releasing the names of government agencies, companies and universities that have been granted permits. The FAA has issued about 750 permits, some 300 of which are still active.

The FBI, the Department of Homeland Security and Customs and Border Protection applied for these permits, as did local police departments from small towns like Gadsden, Ala., to big cities like Houston. Many police departments received Homeland Security grants to buy drones and train their police forces to use them. Facing slowing business as the wars in Iraq and Afghanistan wind down, drone manufacturers solicited the help of the 58-member Congressional Unmanned Systems Caucus to speed up the pace of the FAA permit process.

In February, Congress passed sweeping legislation that forces the FAA to fully integrate drones into our national airspace by 2015, and sooner for government agencies. By May, the FAA waived the application process for police use of drones weighing up to 25 pounds, and is now streamlining the approval process for larger drones.

As the Electronic Privacy Information Center explains, enhanced drone technology is capable of "peering inside high-level windows, and through solid barriers, such as fences, trees, and even walls."

Worse, drones could move from surveillance to offensive action. The Montgomery County sheriff's office in Texas used a \$300,000 Homeland Security grant to buy a helicopter drone. The CEO of Vanguard Defense, the company that sold the drone, said

it is designed to be weaponized and could easily be outfitted with tasers and stun batons.

This is a slippery slope. If confronted with a stand-off similar to the one at the Branch Davidian compound in Waco in 1993, will authorities resort to drones?

When FBI Director Robert Mueller was asked at a congressional hearing in March if Americans could be targeted for assassination by drones here at home, he simply said that he did not know. That's not very reassuring.

All Americans should be asking their elected officials about the limits of the use of drones — before it's too late.

One option is to eliminate federal grants that subsidize drones for police departments. Another is to mandate that police obtain a warrant in circumstances where drones can surveil a private residence or anywhere else citizens have a reasonable expectation of privacy.

Militarization at home, as the Founding Fathers argued centuries ago, is inconsistent with the values of a free society.

Since 9/11, some in Washington seem to have forgotten that a free society depends on a citizenry whose natural rights are protected by a limited and accountable government — not by a government that uses high-tech, stealth video cameras to constantly surveil the public wherever and whenever it wants.

Innocent is a foreign policy analyst at the Cato Institute. Benjamin is the author of "Drone Warfare: Killing by Remote Control."

<http://www.knowdrones.com/>

Video Clip: <http://www.latimes.com/video/gallery/71178113/News/Congress-Domestic-drones-pose-potential-threats>

Congress: Domestic drones pose potential threats

The House Homeland Security Subcommittee held a hearing Thursday about the domestic use of drones. Rep. Michael McCaul expressed concern that drones not only could be hijacked and flown against a target, but also pose other safety issues. (July 19)

[As far as the need to use drones for certain purposes, I would quote Mayor Bates' comment quoted in "Berkeleyside" on July 5th regarding the need for the Berkeley Police to have an armored vehicle: "It's highly unlikely it will be needed very often if at all," Bates said.]

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Alameda County Sheriff Gregory Ahern has publicly stated that the drones he wants to buy and deploy in the East Bay would be used primarily for emergency and disaster response. However, internal sheriff's office documents show that Ahern's staffers also envision using drones for traditional police work, including "intelligence gathering" and "crowd control" during large demonstrations. And some legal experts contend that if the sheriff's office follows through on its plan to use drones for such policing activity, it could violate a 2012 US Supreme Court decision on warrantless surveillance.

Ahern set off a media firestorm this fall when he attempted to gain approval from the Alameda County Board of Supervisors to purchase a drone using \$31,646 in grant money from the California Emergency Management Agency. Ahern then withdrew his request following loud complaints of civil liberties violations and a lack of government transparency. The American Civil Liberties Union of Northern California and the Electronic Frontier Foundation protested the absence of public debate over the use of unmanned aerial vehicles in Alameda County, as well as the lack of guidelines governing drone usage. Ahern, however, is expected to renew his drone request this month, and if Alameda County does acquire a drone, it would be a first for California, which has long been an innovator in law enforcement tactics, with notable examples including SWAT teams (pioneered in Delano and Los Angeles) and anti-gang tactics such as civil injunctions.

Since Congress passed legislation in February ordering the Federal Aviation Administration to fast-track the approval of drones for use by law enforcement agencies, police and sheriff's departments across the country have been scrambling to purchase the smaller, unarmed cousins of the Predator and Reaper drones that have become an integral part of the Obama administration's ongoing war against terrorism.

However, some legal experts say American law enforcement's use of drones raises serious questions about privacy, surveillance, and warrantless searches that touch on core liberties enshrined in the Constitution. Although there are no legal opinions to date that specifically address how drones can be used within the United States, Babak Siavoshi, a teaching fellow at the Samuelson Law, Technology and Public Policy Clinic at the UC Berkeley School of Law, and John Villasenor, a professor of electrical engineering at UCLA and fellow at The Brookings Institution, both contend that a unanimous US Supreme Court decision in January 2012 concerning warrantless surveillance may apply to the use of drones for police work.

In that opinion, *United States v. Antoine Jones*, the high court threw out the drug trafficking conviction of a Washington, DC nightclub owner because police and FBI agents tracked his location for a month via a GPS device without a warrant. The court ruled that law enforcement had violated Jones' Fourth Amendment rights. Jones is currently facing a retrial.

Like GPS devices, small drones can be deployed to track people for long periods of time without their knowledge. As a result, if the Alameda County Sheriff's Office were to use them for surveillance that is similar to what was outlawed in the *Jones* decision, courts may decide to intervene and institute judicial oversight and regulation — since such rules have not been set up by federal, state, or local authorities. "Trust us' isn't a good argument under constitutional law," Siavoshy said.

Siavoshy, who co-wrote the respondent's brief in *Jones*, noted the explicit concerns raised both by conservative Justice Samuel Alito and Obama appointee Sonia Sotomayor in their concurring opinions in the case, both of which addressed how warrantless GPS monitoring clashed with the Fourth Amendment's protections against searches and seizures. Alito's opinion noted that monitoring technology took a great deal of resources before the advent of drones, and was downright inconceivable when the Bill of Rights was drafted. "Traditional surveillance for any extended period of time was difficult and costly and therefore rarely undertaken," Alito noted. "The surveillance at issue in this case — constant monitoring of the location of a vehicle for four weeks — would have required a large team of agents, multiple vehicles, and perhaps aerial assistance. Only an investigation of unusual importance could have justified such an expenditure of law enforcement resources. Devices like the one used in the present case, however, make long-term monitoring relatively easy and cheap."

Sotomayor's opinion also pointed out changing standards of privacy due to shifts in technology. The former prosecutor also wrote of the need for appropriate safeguards (such as warrants) for searches and seizures. "I would also consider the appropriateness of entrusting to the Executive, in the absence of any oversight from a coordinate branch, a tool so amenable to misuse, especially in light of the Fourth Amendment's goal to curb arbitrary exercises of police power to and prevent 'a too permeating police surveillance.'"

The first documented incident of a drone being used to make an arrest in the United States occurred in North Dakota in June 2011, when local police received assistance from an unarmed Predator B drone that belonged to US Customs and Border Protection. The FBI and the DEA have also

reportedly used drones for domestic investigations. Roughly a dozen local police departments and sheriff's agencies have used or are using drones, including the Seattle Police Department.

According to Ahern, Alameda County Sheriff's personnel first tested a drone in fall 2011, and gave a public demonstration of the machine's usefulness for emergency responses during the Urban Shield SWAT competition in late October.

In an interview with the *San Francisco Chronicle*, Ahern denied that he had tried to evade public scrutiny in buying the drone and said it would not be used for blanket surveillance. "This device is used for mission-specific incidents," he said. "We strive to gain the public's trust in everything we do, and I would never do anything of this nature that would destroy the public's trust beyond repair."

Sheriff Ahern and his staff also have repeatedly stated that the capabilities of a drone are not that different from those of a helicopter or survey plane. But Villasenor said drones are markedly different from helicopters and surveillance aircraft because they are cheaper to purchase and maintain, and because they require less fuel and manpower to operate. Drones also can be launched from far more locations than traditional aircraft — and can be kept aloft for long periods of time.

Internal sheriff's office documents obtained by the Electronic Frontier Foundation (EFF) also indicate that sheriff's personnel have different plans for the drones than what Ahern has publicly described. A July 20, 2012 memo from sheriff's Captain Tom Madigan elucidated potential uses for drones in emergency response, explosives disposal, search and rescue, and a range of policing uses that raise civil liberties concerns.

"The Alameda County Tactical Commanders were consulted, a regional group of SWAT team commanders throughout the County of Alameda. A UAS [drone] would be valuable to assist with barricaded suspects, surveillance (investigative and tactical) perimeters, intelligence gathering, rough terrain, suspicious persons, large crowd control disturbances, etc.," the memo says.

Drone-mounted cameras also can be equipped with Forward-Looking Infrared (FLIR) technology that reads heat signatures through buildings, and intelligent video programs, such as facial recognition software that acts as a sort of license-plate reader for people. All three bids from drone manufacturers submitted to the Alameda County Sheriff's Office included FLIR camera packages for the drones.

FLIR technology also raises Fourth Amendment issues, Siavoshy said. The US Supreme Court case of *Kyllo v. United States* ruled that the use of a heat-detection device by law enforcement to find an indoor marijuana grow required a warrant. Thus, if the sheriff's office wanted to use the drones' FLIR capabilities, it would need some form of judicial approval beforehand. "They'd need a warrant before using this one on a home," said Siavoshy.

The EFF and ACLU want a public dialogue about the use of drones by local law enforcement and seek to establish a set of guidelines that would protect individual privacy and restrict how drones could be used during domestic policing. In a December 3 letter to the Alameda County Board of Supervisors, ACLU attorney Linda Lye outlined the case for public discourse and deliberation before making the decision to approve a drone purchase.

"Because drones pose unique dangers for privacy invasions and are subject to potential abuse, any decision by the County to purchase a drone should be made through an open and transparent process with ample opportunity for public participation and comment," the letter read.

If the Alameda County Board of Supervisors approves Sheriff Ahern's request to spend state grant money on a drone, the bids solicited by the sheriff's office make it clear that county taxpayers will have to foot the bill for it. Sheriff's Captain Madigan stated in his July 20 memo that the cost of the requested drone model, Dragon Fly UAS with live video downlink and FLIR, is \$30,000. But documents released last month by the ACLU of Northern California show that the Alameda County Sheriff's Office already received bids for drones from Aeryon, Lockheed Martin, and ING. Aeryon offered two separate deals with different parts and equipment at \$67,500 and \$107,500; Lockheed Martin gave a quote of \$49,981 for its QR425 QuadRotor model; and Canadian firm ING provided options that cost between \$90,495 and \$135,995. Any of those choices, in other words, could require the sheriff's office to use county funds to make up the difference.

The Sheriff's Office also could spend the state grant money that it plans to use for a drone on other, less controversial policing, needs — such as buying additional equipment for the county crime lab or funding additional personnel who might be able to help its counterparts in Oakland with a staggering backlog of ballistics and forensics evidence.

But California law enforcement agencies appear to be very eager to spend taxpayer funds on drones rather than traditional policing. Documents obtained by the EFF in collaboration with the open records website MuckRock.com reveal that the San Francisco Police Department's \$100,000 request

to purchase a Remotely Piloted Vehicle was rejected by the local Urban Area Security Initiative, a regional Homeland Security administrative agency. In San Diego, where the Border Patrol already operates several Predator B drones for reconnaissance along the US-Mexico border, county Sheriff William Gore announced his intention last month to purchase a drone.

The California legislature's new Democratic supermajority, however, could create new regulations for drones in 2013. State Senator Alex Padilla from the San Fernando Valley introduced Senate Bill 15 on December 3, which would attempt to establish rules for drone usage in California.

Padilla's bill seeks to bring legislators into a discourse about the "new challenges to the privacy and due process rights of Californians" posed by drones. The most specific provision in SB15 recommends that data, including photographs, video, and recordings of people in public and private settings, should be kept to a minimum and retained in compliance with existing laws governing privacy.

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BERKELEY POLICE DEPARTMENT

DATE ISSUED: November 26, 2012

POLICE REGULATIONS – CHAPTER 3

51.408 – N.S.)

PR 336 **Special Requests – Mutual Aid/Assistance – Helicopters.** The use of police helicopters from other law enforcement agencies is permitted with the approval of the Chief of Police or City Manager for:

- 1 - Disaster Assistance**
- 2 - Rescue efforts, excluding hostages**
- 3 - Locating missing persons**

The City Council shall be notified in writing within 24 hours in each case where a helicopter is used. (Berkeley City Council Resolution No. 51.408 – N.S.)

PR 337 **Special Requests – Mutual Aid/Assistance – Tasers.** The use of police tasers at the request of the Berkeley Police Department may be permitted with the approval of the Chief of Police or City Manager. Once approved, a taser will only be deployed by Outside Agency Personnel responding to a request for assistance.

Care and Use of Departmental Property

PR 338 **Departmental Property – Location – Moving From.** Employees shall not move office equipment or furnishings outside of the Division to which the equipment is assigned without permission of the Commanding Officer of the Division concerned and the Support Services Division Commander.

PR 339 **Departmental Property – Care Of.** Employees using Departmental equipment or property shall be responsible for its proper care and use. Failure of an employee to exercise reasonable care in the use of Departmental equipment or property may result in disciplinary action.

Off duty loss of or damage to equipment permanently issued to employees (e.g., gun, leather, handcuffs, etc.) shall be the employee's responsibility to repair or replace. Other loss or damage to property or equipment issued to employees shall be the employer's responsibility to repair or replace so long as it is a direct consequence of the discharge of the employee's duties.

In those instances where the employee has the responsibility for repair or replacement, the employee shall make his/her own arrangements expeditiously, insuring that replaced equipment meets approved specifications.

* Highlighted text is new

BERKELEY POLICE DEPARTMENT

DATE ISSUED: November 26, 2012

POLICE REGULATIONS – CHAPTER 3

(b) To apprehend a suspected fleeing felon:

- (1) When necessary to prevent escape, and
- (2) When the officer has probable cause to believe that the suspected fleeing felon poses a significant threat of death or serious bodily injury to the officer or others, and
- (3) Where feasible, some warning has been given.

PR 333

Police Vehicles – Passengers In. Employees operating police vehicles shall not permit passengers to ride except when necessary in the accomplishment of an essential police objective or when authorized by a Commanding Officer or in the absence of a Commanding Officer by the ranking officer on-duty.

PR 334

Police Vehicles – Citizens Requesting to Ride with Officers. Participation from members of the general public riding as observers in patrol cars was rescinded on 10/18/91. As set forth in the amended ride-along procedures, individuals eligible to ride along are limited to Berkeley Police Aides and Public Safety Dispatchers, and individuals specifically authorized by the Chief of Police.

Special Requests

PR 335

Special Requests – Mutual Aid/Assistance – Police Dogs. The use of Police Dogs from other law enforcement agencies is permitted with the approval of the Chief of Police or City Manager:

- 1 - to apprehend suspects where there is a threat to human life, and the suspect is reasonably believed to be armed with a deadly weapon, and the suspect is in a controlled, contained area and there are no known occupants of the area other than the suspect; or
- 2 - to locate missing persons; or
- 3 - to locate crime scenes.
- 4 - The use of dogs is explicitly prohibited for use in crowd control.

The City Council shall be notified in writing within 24 hours in each case where a dog is used. (Berkeley City Council Resolution No.

* Highlighted text is new

Meehan, Michael

From: Daniel, Christine
Sent: Friday, December 14, 2012 11:43 AM
To: Meehan, Michael
Subject: FW: Resolution 51,408
Attachments: 51,408 - Police use of Dogs and Helicopters.pdf

Mike, here is the Resolution and staff reports from 1982 underlying the helicopter and dog policies. The attachments include PRC reports as well. Interesting reading. You will note a reference to a 1974 memo from City Manager John Taylor—he is the retiree William and I took to lunch on Wednesday. —cd

From: Meehan, Michael
Sent: Thursday, December 13, 2012 6:29 PM
To: Daniel, Christine
Subject: PR 336

Here is the language regarding helicopters:

PR 336 Special Requests – Mutual Aid/Assistance – Helicopters. The use of police helicopters from other law enforcement agencies is permitted with the approval of the Chief of Police or City Manager for:

- 1 - Disaster Assistance
- 2 - Rescue efforts, excluding hostages
- 3 - Locating missing persons

The City Council shall be notified in writing within 24 hours in each case where a helicopter is used. (Berkeley City Council Resolution No. 51.408 – N.S.)

RESOLUTION NO. 51,408 -N.S.

ESTABLISHING POLICIES FOR USE OF DOGS AND HELICOPTERS BY THE POLICE DEPARTMENT OF THE CITY OF BERKELEY, AND RESCINDING THE PROVISIONS OF RESOLUTION NO. 48,630-N.S. AS THEY APPLY TO THE USE OF DOGS AND HELICOPTERS.

BE IT RESOLVED by the Council of the City of Berkeley as follows:

That the following policies for use of dogs and helicopters by the Police Department of the City of Berkeley are hereby established:

1. Police use of dogs from other law enforcement agencies is permitted upon approval of the City Manager (or upon approval of the Chief of Police in emergency situations when the City Manager is not immediately available) in the following circumstances:

a. To apprehend suspects

- (1) Where there is a threat to human life, and
- (2) Where the suspect is reasonably believed to be armed with a deadly weapon, and
- (3) Where the suspect is in a controlled, contained area and there are no known occupants of the area other than the suspect; or

b. To locate missing persons; or

c. To locate crime scenes.

Provided, however, that the use of dogs is explicitly prohibited for use in crowd control.

2. Police use of helicopters from other law enforcement agencies is permitted upon approval of the City Manager (or upon approval of the Chief of Police in emergency situations when the City Manager is not immediately available) in the following circumstances:

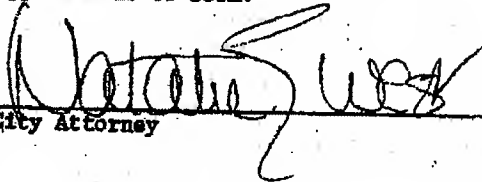
a. To assist in case of a disaster; or

b. To assist in rescue efforts (specifically excluding the rescue of hostages); or

c. To assist in locating missing persons.

FURTHER, RESOLVED, that the provisions of Resolution No. 48,630-W.S. as they apply to the use of dogs and helicopters are hereby rescinded.

Approved as to form:


City Attorney

Copies sent 8/12/82

To: City Manager
Police Department

RESOLUTION

No. 51,408 N.S.

Dated July 15, 1982

Adopted by the Council of the City of Berkeley by the following votes

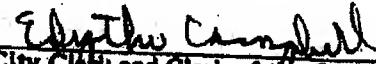
Ayes: Councilmembers Bach, Dean, Feller, Sweeney, Washburn

Noes: Councilmembers Denton, Fukson, McDonald, President Newport

Abstaining: None

Absents: None


Mayor and President of the Council

Attest 
City Clerk and Clerk of the Council

City of Berkeley

CITY MANAGER'S OFFICE
2180 MILVIA STREET
BERKELEY, CALIFORNIA 94704



(415) 644-6580

CR-506 Public Hearing: 7:30 p.m.

FOR COUNCIL ACTION

July 15, 1982

To: Honorable Mayor and Members of the
City Council

From: Daniel Boggan, Jr., City Manager

Subject: POLICY ON THE USE OF DOGS AND HELICOPTERS FOR LAW ENFORCEMENT
PURPOSES: REVIEW OF MUTUAL AID PACTS AND AGREEMENTS

A. Need for Council Action

At their meeting of November 24, 1981, the Berkeley City Council referred the present Berkeley policy which prohibits the use of dogs or helicopters for a law enforcement purpose to the City Manager and the Police Review Commission with a request to consider the reasonableness and appropriateness of such a policy.

Pursuant to Council's request, the Police Review Commission reviewed the policy issue at meetings on January 13 and January 27, 1982, and voted to recommend the use of dogs and helicopters in certain situations as set forth in the attached report. In addition, the PRC has also recently reviewed all agreements, understandings and policies which exist between the Berkeley Police Department and other law enforcement agencies.

B. Background

On April 17, 1973, the voters of Berkeley passed Initiative Ordinance No. 4 (enacted as Ordinance No. 4640-N.S.) which provided for annual public hearings and Council approval of Mutual Aid Pacts between the Berkeley Police Department and all other law enforcement agencies. From 1973 until 1977, the Council followed a procedure for adoption of Mutual Aid Pacts which included annual review of the pacts by the Police Review Commission and the Council. On March 22, 1977, the Council passed Resolution No. 48,630-N.S., in which it approved all pacts for that year and specifically prohibited the use of dogs

for any law enforcement purposes and helicopters except in case of disasters or rescue efforts (excluding the rescue of hostages). Since 1977, the procedure required by the ordinance has not been followed. At the City Manager's request, the Police Department has prepared an update of all Mutual Aid Facts which has been reviewed by the PRC and which is being presented for Council review at this time.

After reviewing the Police Review Commission Report on dogs and helicopters, I recommend that dogs be allowed only as set forth in that report, but that helicopters not be allowed.

Recommendation

That the Council adopt the attached Resolution which approves the Mutual Aid Facts and regulates the use of dogs and helicopters as set forth therein.

Attachment

RESOLUTION NO. -N.S.

APPROVING MUTUAL AID PACTS AS RECOMMENDED BY THE CITY MANAGER AND RESCINDING RESOLUTION NO. 48,630-N.S. AS IT APPLIES TO THE USE OF DOGS AND HELICOPTERS.

BE IT RESOLVED by the Council of the City of Berkeley as follows:

That the Mutual Aid Pacts as recommended by the City Manager are hereby approved;

That Resolution No. 48,630-N.S. is hereby rescinded as it applies to the use of dogs and helicopters and the following policy is hereby adopted:

1. Police use of dogs from other law enforcement agencies is permitted upon approval of the City Manager (or upon approval of the Chief of Police in emergency situations when the City Manager is not immediately available) in the following circumstances:

A. To apprehend suspects

1. where there is a threat to human life, and
2. where the suspect is reasonably believed to be armed with a deadly weapon, and
3. where the suspect is in a controlled, contained area and there are no known occupants of the area other than the suspect; or

B. To locate missing persons; or

C. To locate crime scenes;

D. Provided, however, that the use of dogs is explicitly prohibited for use in crowd control.

2. Police use of helicopters from other law enforcement agencies is prohibited.

Approved as to form:

City Attorney

CITY OF BERKELEY



POLICE REVIEW COMMISSION
2121 MCKINLEY AVENUE

BERKELEY, CALIFORNIA

(415) 644-6716
94704

JULY 15, 1982

FOR COUNCIL ACTION
PRESENTED TO COUNCIL
CITY OF BERKELEY

To: Honorable Mayor and
Members of the City Council

JUL 1 1982

From: Police Review Commission

OFFICE OF
CITY CLERK

Subject: 1. Revised Recommendation for use of Dogs and Helicopters
2. Background of the Recommendation

At its meeting of 1/27/82, the PRC recommended that police use of dogs be permitted under certain conditions. Since forwarding that recommendation to the Council, inconsistencies and loose language have been noted, and the Commission revised the wording of its proposal accordingly. The present language, therefore, represents the policy we would ask the Council to consider. We have also added a brief background of this matter for the Council's information.

The PRC recommends that police use of dogs should be permitted under the following conditions:

1. With the approval of the City Manager (except in circumstances where he/she is not immediately available, and then with the approval of the Chief of Police).
2. Where there is reason to believe that a threat to human life exists, and
3. Where there is reasonable cause to believe that a suspect is armed with a deadly weapon, and
4. Where the suspect is believed to be in a controlled, contained area and there are no other known occupants of the area other than the suspect.
5. Further, that the use of police dogs may be approved (#1 above) to locate missing persons or to locate crime scenes.
6. The use of dogs in crowd control is explicitly prohibited.

July 15, 1982

The PRC recommendation is based on the general premise that it is desirable to have alternatives to the use of deadly force, and the Commission's discussions centered on the question of whether dogs constitute such an alternative. Our conclusion was that, in the circumstances specified in the recommendation, dogs offer a significant advantage in apprehending a suspect without potentially fatal injury to himself or to police officers. The recommendation envisions a situation in which dogs would be most likely to be effective, and is closely modeled on the BPD regulation governing the discharge of firearms by officers.

Useful background information will be found in the materials attached; a 1979 report from a PRC committee (the "Louie report") which provides the factual basis for the Commission's recommendation, and "Information on History of Use of Dogs...", prepared by the PRC's Investigator in connection with a Commission inquiry. These reports clarify the important elements of dog use, pro and con.

Pro: Dogs are highly effective for searches in enclosed spaces.

"Members of the committee came away from the ride-along experience observing the Richmond PD canine operation with the impression that dogs can be used safely and humanely in law enforcement, especially building searches, where the protection of human lives (bystanders, officers, and suspects) is of paramount importance." (Louie, pg. 5)

Con: Most of the arguments against dogs---considerations of cost, efficiency, training, etc.---do not apply in this case, since dogs would be borrowed from neighboring jurisdictions at no cost to the city. The most substantial reservation is the undoubted distaste felt for dogs because of their repressive use against civil rights demonstrators, in South Africa, etc. Any advantage gained must thus be weighed against the negative community reaction.

The PRC did not attempt to measure community feeling on this issue, on the grounds that the Council would be in a better position to do so. But while dogs have unpleasant associations in the abstract, we feel that their use is reasonable in specific instances in which they might prevent injury or death to officers or suspects. The suspension of the prohibition during the Stinky rape series in 1978 demonstrates that the community believes that there are worse things than the controlled use of dogs. It is not anticipated that dogs would be used with any frequency, but it is our recommendation that this option should be available should need arise.

July 15, 1982

The Commission further recommended that the use of helicopters by police should be approved under the following conditions:


1. With the approval of the City Manager (except in circumstances where he/she is not immediately available, and then with the approval of the Chief of Police).
2. Where there is reason to believe that a threat to human life exists, and
3. Where there is reasonable cause to believe that a suspect is armed with a deadly weapon, and
4. Where a helicopter would aid significantly in locating or containing the suspect.
5. Further, that the use of helicopters may be approved for locating missing persons, for rescue missions, hostage situations, and disasters.
6. The use of helicopters in crowd control is explicitly prohibited.

The Commission's rationale in approving limited use of helicopters is the same as for the use of dogs: that they should be available when they are likely to be effective in averting injury or death. Reservations about helicopters include community dislike for noise and "big brother" associations, and also the danger arising from the possibility of crashes. It is the opinion of the Commission majority, however, that helicopter use in these limited circumstances is potentially of great benefit, and that the safety question is no more pressing in this case than in that of the many non-police helicopters that fly over Berkeley every day.

Since Berkeley would not have its own dogs or helicopters, their use would naturally be subject to availability from the departments from which they would be borrowed. Even if our conditions were met, they might not be available, or other alternatives might be preferable. Nevertheless, the police should have a full range of options for the resolution of potentially violent situations. We are convinced that the use of dogs and helicopters would be a valuable addition to the present options when used according to this recommendation.

Police Review Commission

by


Stan Washburn, chair

CITY OF BERKELEY



POLICE REVIEW COMMISSION
2121 MCKINLEY AVENUE

BERKELEY, CALIFORNIA

(415) 644-6716
94704

June 17, 1981

To: Police Review Commission
From: Peter N. Hagberg, ^{PIR} Investigator
Police Review Commission
Re: Information on History of Use of Dogs in Berkeley and Police
Review Commission Studies of the Use of Dogs -- PRC Complaint
No. 500 and 501

A. History of Use of Dogs in Berkeley

The Berkeley Police Department used canine units in the 1930's and 1940's. The practice was discontinued voluntarily. Apparently because the program proved expensive and the dogs (Doberman pinschers) created patrol problems in some situations. Officers had paid most costs

There the matter stood until 1975 when two Berkeley Police Department members proposed using their German sheppards to establish a canine unit in Berkeley. They volunteered to pay for the care and feeding of their animals. After a public hearing at which a large number of minority citizens protested the use of dogs, the Police Review Commission voted against the program and recommended that the City Council hold a public hearing before the use of dogs be permitted.

Then Chief of Police Wesley Pomeroy withdrew his support for establishment of a canine unit, based upon community opposition. He said that community support for police was more important than whatever benefit would result from the use of dogs.

This analysis had been used by City Manager John Taylor the year before to recommend, against executing an agreement for use of the Oakland helicopter.

Chief Pomeroy stated that the police department would "make no further effort to seek support for the use of dogs (memorandum of

City Manager Taylor had said: "It is felt that at this time disadvantages caused to law enforcement by worsening police-community relations would outweigh the advantages of technology provided by police department helicopters." (Memorandum from City Manager to Council of March 12, 1974 regarding Mutual Aid Pacts.)

May 21, 1975); and since that time, the police department has never initiated a request or made any study as to the utility of the use of dogs. All requests for, and studies of, the use of police dogs have been generated from non-police sources.

Matters stood in that posture until shots were reported fired at a Berkeley police officer in Aquatic Park. In response, the Berkeley police called in dogs and helicopters to help search for the alleged assailant(s). The search was unsuccessful.

Protest of that use were made. It was determined that there was no firm written policy against the use of dogs and helicopters. The PRC recommended that the Council adopt policies which were adopted in March 1977.

Within three days, the Albany Chief of Police was making public claims that a mugger had escaped apprehension because Berkeley police would not allow him to use Richmond police dogs to seek the perpetrator who had disappeared in a residential area of West Berkeley. A PRC investigation of the Albany Chief's claims showed the the Albany Police Department had used police dogs only once in the previous year, that the Albany police officers were not sure where the man had disappeared, that the relevant blocks had not been "sealed" as claimed and that teenagers and neighborhood dogs were present in the backyard areas being searched by officers. A copy of the PRC investigative report is attached.

Comments were made by law enforcement officers at that time about disregarding the policy; but the policy was, in fact, honored until community concern about "Stinky" gave rise to the suggestion that dogs be used in an attempt to apprehend him. The Police Department made no formal request to use dogs and made no study or report as to their use. Initially Acting Chief Crooke indicated to the PRC that he did not think police dogs would be particularly helpful in apprehending "Stinky." Subsequently he and other command personnel indicated to the City Council that while they did not know if dogs could help but that they might. The police department took the verbal position that dogs, to be most effective, should be used on a regular patrol basis.

In February 1978, the Council passed, without a favorable PRC recommendation, a resolution permitting the police to use dogs and helicopters for a 5 month period in the "limited basis" of cases "which may connect" with the study series.³

The PRC requested that Assistant Administrative Analyst research the use of dogs and other techniques by other Departments with rape problems. Her report of interviews with law enforcement personnel from Sacramento and San Jose, which had dog units and well publicized rape series (excerpts attached), indicated that use of dogs would be ineffective for Stinky type situations.

²See attached newspaper clipping.

³See memorandum of February 14, 1978 from Councilmembers Davis, Dean and Hancock to the City Council. City Council minutes of meeting of February 14, 1978

The Police Department called in the Richmond canine unit twice. These efforts were unsuccessful in location or apprehending a suspect. An evaluation of those uses and a public hearing before the City Council was supposed to occur in order to determine whether the limited use should continue. These did not occur and the "limited use" authorization expired on June 30, 1980.

Six months later the Berkeley police called in the Richmond canine unit in an attempt to flush out robbery suspects who were holed up in a store on Telegraph Avenue. The police dog was able to locate one suspect inside the building who surrendered. Tear gas was used and a second suspect surrendered. The third suspect escaped.

A motion to condemn the violation of city council policy by city staff failed in the PRC. The PRC voted to refer the present policy on use of police dogs to the PRC Policy and Practices Committee. Commissioner James Louis researched and wrote a report recommending that use of a canine unit be permitted, with the consent of the City Manager, only where the following conditions are met:

- 1) There is a threat to human life;
- 2) The suspect is reasonably believed to be armed with a deadly weapon;
- 3) The suspect is in a contained, controlled area (physically enclosed);
- 4) Under no circumstances shall canines be used for crowd control.

This recommendation was modified and passed in September 1979, as follows:

WHEREAS, IN DECEMBER 1978, THE CHIEF OF POLICE AND THE CITY MANAGER CHOSE TO UTILIZE DOGS IN THE WORLD OF PANTS INCIDENT DESPITE THE FACT THAT SUCH USE WAS THEN PROHIBITED BY CITY POLICY; AND

WHEREAS, THIS COMMISSION BELIEVES THAT, ABSENT AN UNFORESEEN EMERGENCY, CITY POLICY MUST BE COMPLIED WITH; AND

WHEREAS, THIS COMMISSION BELIEVES THAT, IF THE CHIEF OF POLICE AND THE CITY MANAGER DISAGREED WITH EXISTING CITY POLICY REGARDING THE USE OF DOGS, THE APPROPRIATE WAY TO OBTAIN MODIFICATION OF THAT POLICY WAS TO PETITION THE CITY COUNCIL AND THE POLICE REVIEW COMMISSION FOR CHANGE; AND

WHEREAS, THE CITY MANAGER AND CHIEF OF POLICE DID NOT PETITION THE CITY COUNCIL AND THE POLICE REVIEW COMMISSION FOR SUCH CHANGE; AND

WHEREAS, THIS COMMISSION DOES NOT BELIEVE THAT THE USE OF DOGS IN THE WORLD OF PANTS INCIDENT WAS AN APPROPRIATE WAY TO CHANGE SUCH POLICY; AND

WHEREAS, THE COMMISSION HAS UNDERTAKEN A COMPLETE AND THOROUGH ANALYSIS OF THE EXISTING POLICY AS TO THE USE OF DOGS, AND

WHEREAS, THE COMMISSION RECOMMENDS THAT THAT POLICY SHOULD BE MODIFIED; AND

WHEREAS, THE GRANTING OF AUTHORITY TO USE DOGS SHOULD BE STRICTLY LIMITED; AND

WHEREAS, THIS COMMISSION EXPECTS SUCH LIMITATIONS TO BE STRICTLY OBSERVED BY THE CITY MANAGER AND THE CHIEF OF POLICE;

THAT THE POLICE REVIEW COMMISSION RECOMMEND THAT CANINE UNITS MAY BE CALLED FROM ANOTHER LAW ENFORCEMENT AGENCY AND USED UNDER CERTAIN CONDITIONS AND THAT APPROVAL IS TO BE SECURED BY THE BERKELEY POLICE DEPARTMENT FROM THE CITY MANAGER;

THAT THOSE CONDITIONS SHOULD BE: THERE IS A THREAT TO HUMAN LIFE; THE SUSPECT IS REASONABLY BELIEVED TO BE ARMED WITH A DEADLY WEAPON; AND THE SUSPECT IS IN A CONTROLLED, CONTAINED AREA AND THERE ARE NO KNOWN OCCUPANTS OF THE AREA OTHER THAN THE SUSPECT(S); AND

THAT UNDER NO CIRCUMSTANCES SHALL CANINE BE USED FOR CROWD CONTROL.

In substance, the recommendation of Commissioner Louie had been passed with three changes. First, concern was expressed over the police department's and city manager's past failure to follow express city policy and the Commission asked for strict adherence to the proposed policy of limited use of dogs. Second, the recommendation called for use of dogs from neighboring agencies. The idea of a Berkeley canine unit was rejected. Thirdly, dogs were not to be used to search for building searches where there were known occupants other than the suspect.

This motion was subsequently reviewed by a newly appointed Commission which passed motions reaffirming the existing policy against the use of dogs for law enforcement purposes and disapproving the use of dogs in the "World of Pants" incident on the language passed by the previous Commission.

Neither dogs nor helicopters were used in Berkeley for law enforcement purposes between December 1978 and February 1981.

B. Analysis of Use of Dogs and Helicopters in Berkeley

1. Recent History

Helicopters have been used twice for law enforcement purposes in Berkeley in the past 7 years. Both cases involved officer shootings and the search for suspects or witnesses.

Dogs have been used on five occasions and an attempt was made by an outside agency to use them on a sixth occasion.

Two cases involved officer shootings. Those two cases involved attempts to track suspects/witnesses in open, uncontained areas. The two used of "Stinky-type" prowls also involved attempts to track suspects in open, uncontained areas, even though the initial point where an attempt was made to find ascent may have been a house or fenced yard. The attempt by the Albany Police to use dogs was another variation of attempts to use dogs to track an open, uncontained areas. These types of tracking uses are generally unfruitful, according to the information available to the PRC.

The "World of Pants" incident was the one time dogs were used in an enclosed contained area. They were partially successful and partially unsuccessful. Only this use would comport with the guidelines proposed by the Commission in 1979.

The Albany situation is an example of an unstated response -- a display of opposition to the policy. This was only the second attempt by the Albany Police to use dogs in a year, although it is unrealistic to think it was only the second time that a mugger, prowler or other serious criminal suspect had escaped the Albany Police by flight on foot.

It is interesting to note that according to Commissioner Louie's 1979 report (attached) surveying neighboring police departments, the Oakland Police Department indicated that it never used or borrowed police dogs for any purpose.

The Albany incident, as well as the BPD position in the present case, highlights the "embarrassment" felt by the BPD in enforcing this policy against outside agencies. This embarrassment, in turn, points out the potential conflict between broader "public policy" considerations and narrower "law enforcement" interests.

Thus, there seems to be a significant emotional component in the police decision to use dogs, as well as in the civilian decision to limit their use.

2. Prior Berkeley Canine Unit

Berkeley's experience with dogs in the 1930's and 1940's¹ was that they were useful in a) protecting officers during searches and when under physical attack, b) guarding police vehicles and prisoners, and c) in tracking when adequately trained. The problems were:

- a) The costs of purchasing, training and maintaining the dogs;
- b) The ceaseless training necessary for the dogs;
- c) Problems of control around citizens and non-handling officers;
- d) Dog odor which quickly permeated the police vehicle in which they normally rode making the vehicle unpleasant to persons riding in it;
- e) The training and control of the dogs interfered with the performance of essential police duties.

¹See Samuel Chapman, A Study of the Use of Police Dogs and the Development of a Plan for their Use in the U.S., p. 51-52 (1959 in U.C.

Information on History of Use of Dogs
June 17, 1981
Page 6

Both the positive and negative aspects of use of police dogs experienced by the Berkeley Police Department were reflected in recent newspapers articles regarding use of police dogs in other jurisdictions. A police dog in Los Angeles as recently reported to have been instrumental in locating a robber hidden in an apartment complex. In another recent article, a Richmond police dog reportedly attacked a woman who was hugging a friend in the street. While the Richmond police said the couple had been fighting, it was not disputed that the dog left the car without any officer command and mauled the woman.

PNH:dc

COMMUNICATION NO. 364

CITY OF BERKELEY



POLICE REVIEW COMMISSION
2121 MCKINLEY AVENUE

BERKELEY, CALIFORNIA

(415) 644-6716
94704

September 20, 1979

To: Police Review Commission
From: PRC Committee on BPD Policies and Practices
Re: BPD Use of Dogs in World of Pants Incident

At the January 10, 1979 PRC meeting the World of Pants incident, where dogs were utilized in a barricaded subject situation, was discussed. Chief Sylvester provided details of the incident and explained his reasons for taking that action. He advised "that because of the threat to life and property, he decided to try the most reasonable option -- the use of dogs to locate the suspects inside the building from whom they received no response." There was considerable discussion over the apparent contravention of a City Council policy regarding the use of dogs.

Several motions were made, and finally the PRC passed the following:

"The Police Review Commission, before sending anything to the City Council, or reviewing current policy with the City Manager, City Attorney, or Chief of Police, should refer the matter of the City Council's policy on the use of dogs under conditions of threat of life to the Policies and Practices Committee and also the question of whether a public hearing should be held on the subject."

A brief history of the use of dogs issue in Berkeley is helpful at this point. In 1975, the Berkeley Police Department proposed a Canine Program which was subsequently withdrawn. The PRC recommended to the City Council on September 9, 1975, "...that the City Council, pursuant to the PRC motion...upon advice from Chief Wesley Pomeroy, table any further discussion concerning the proposed Berkeley Police Department Canine Program."

On March 22, 1977, the PRC, as part of the Mutual Aid Pacts, made the following statement regarding the use of dogs in law enforcement:

3) Agreements between the BPD and All Other

Law Enforcement Agencies Concerning the Use of Dogs

In July, 1975, the Police Review Commission was presented with a proposal to introduce a canine unit in the City of Berkeley. The Commission voted not to authorize the establishment of such a canine unit. Subsequently, the Chief of Police indicated that he was not in favor of the use of such a canine unit in Berkeley.

The view of a significant number of citizens in the minority community, as was expressed in part at our public hearing on the dog issue, is that the use of dogs by police in other jurisdictions in the past was so abusive that the use of dogs in Berkeley today would undoubtedly antagonize many citizens. There are many other citizens who agree with this perspective.

The Police Review Commission believes that the use of dogs by law enforcement personnel in the City of Berkeley is unacceptable under any circumstances. The Police Review Commission further believes that the emotional fervor surrounding the use of dogs is by itself sufficient reason to outlaw their use in Berkeley. Until the negative feelings surrounding the use of dogs subsides, there can be no real use for dogs in Berkeley given the other techniques and equipment for law enforcement that is presently available to the BPD.

The PRC recommended to the City Council "That dogs not be used in Berkeley for any law enforcement purposes."

The City Council approved the PRC recommendation. Chief Pomeroy issued instructions to all personnel prohibiting use of dogs on March 29, 1977.

The BPD had solicited information previously from various police departments regarding the use of canine units. Commissioner Louis reviewed the canine programs of those departments that responded. (Copy of list attached)

The most frequent and efficient/effective use of canine units among the responding police departments was in building searches. A canine unit is defined to include a canine and an officer, who is the canine's handler. A canine unit could "search" an average size building within ten minutes while two officers could require thirty minutes or more to do the same task.

Following are some representative responses. However, to maintain the confidentiality of the departments their names are

Following are some representative responses. However, to maintain the confidentiality of the departments, their names are omitted, but their general location is noted.

Northern California cities:

- a. "...no crowd control use...Court use of dogs as qualified witness...Superior Court *Ca vs Turner, Cunningham and Grey, 1977*...canine unit had regular beat assignment..."
- b. "...we have two public demonstrations per month...searches and locating lost articles are main activity."

Southern California cities:

- a. "greatest asset is psychological deterrent which cannot be effectively analyzed." Two minor claims paid for bites; one was a tow-truck driver and the other was a citizen who approached the dog in a confined area.
- b. "...had requests from LAPD, Los Angeles County Sheriff, Torrance, El Segundo, Hawthorne, and Santa Monica for building and area searches..."
- c. "...crowd control (one dog vs 150 persons)...some civil claims, no awards...searching is main function..."

Other cities; East, Midwest, and West Coast:

- a. "...inservice training, speaking engagements, sickness of either dog and/or handler caused actual usage of canine units at 20%...better to get canine from a rental/leasing service in lieu of owning..."
- b. (discontinued in 1978) "...not used for crowd control...used in high crime areas where officer safety is a major consideration...retrieval of lost/stolen articles, narcotic drug detection..."
- c. "Apprehension rate on felony suspects is; building searches 100%, tracking 10%...used in crowd control successfully..."
- d. "...one canine team is worth ten club-wielding officers in riots."
- e. "...tracking, searches, no crowd control...requires departmental approval prior to usage and written report after usage."

- f. "Mission is to locate people and/or things touched by people at or near crimes...canine teams supportive role to police."

The foregoing comments suggest a range of usage, effectiveness, and sensitivity toward the use of canines in police work. Canine usage is by no means universally accepted by law enforcement agencies; some have not tried them, some have tried them and ceased after a period of time, and some continue to have them. A conclusion that can be drawn from the survey data is that by far the most effective and most common use of dogs in law enforcement is in building searches. Less effective, although still commonly used, are dogs in tracking and searching in open areas. Authority to use canines in those agencies that have them varies. Some leave the discretion to the officers while others require departmental approval.

Neighboring police departments were contacted regarding their policies on the usage of dogs in their cities. The results are as follows:

<u>ITEM</u>	<u>ALBANY</u>	<u>EMERYVILLE</u>	<u>OAKLAND</u>	<u>RICHMOND</u>	<u>SAN FRANCISCO</u>
Have canine unit	NO	YES	NO	YES	(Disbanded in 1978)
Borrow Canines	YES	N/A	NO	N/A	
<u>USE CRITERIA</u>					
Routine Patrol	NO	YES	NO	YES ²	NO
Rape	1,3	YES	NO	YES	3
Crowd Control	1,3	YES ³	NO	YES	NO
Burglary	YES	YES	NO	YES	3
Containment	1,3	YES	NO	YES	NO
Building and Area Searches	YES	YES	NO	YES	YES

- Notes: 1. Will use dogs but had no occasion up to now.
 2. Canine unit is part of routine patrol, however the dog may not be used on all occasions.
 3. Used as back-up to officers only.

Following the PRC's January 1979 referral of this issue to the Policies and Practices Committee, a majority of the PRC has participated in ride-alongs with the Richmond Police Department

canine units to get a first hand knowledge and experience. They learned about the training procedures, the control and direction given by the handlers, and the various types of uses and their effectiveness. The canine units are floaters, that is, they have no specific beats but respond to assignments from the department dispatchers. The officers, in responding to assignments, do not utilize dogs in all instances. Where possible, PRC members were given demonstrations of dogs conducting a search in an office area. Members of the committee came away from the ride-along experience observing the Richmond PD canine operation with the impression that dogs can be used safely and humanely in law enforcement, especially building searches, where the protection of human lives (bystanders, officers and suspects) is of paramount importance.

In February of 1978 the City Council approved a temporary (through June) usage for canine units in the hope of apprehending "Stinky".

During that period, the Richmond canine units were called on two occasions. On February 17, 1978 the canine unit was called but Richmond did not dispatch the unit because they determined that the delay in the Berkeley request made successful outdoor tracking of the suspect improbable.

On February 20, 1978 the canine unit was called for a suspected burglar contained in a residential yard area. Although the area was sealed off fairly quickly, the canine unit arrived approximately 40 minutes after the burglary was reported. The dog searched the area for approximately 45 minutes without success.

Some conclusions may be drawn from the available data. The data shows a wide range of canine usage, from crowd control to tracking to building searches. It also shows that canines are not universally accepted in law enforcement activity. Community awareness and sensitivity do play a significant role in the decision whether canines should or should not be used in law enforcement.

There is little to suggest that canines are successful in tracking of rapists. Ideal conditions are imperative to successful tracking, and urban settings do not offer many ideal conditions. The February 17 rape case seems to be a typical example where "ideal" conditions (immediate response, available scent, no wind, etc.) do not exist. The canine unit was not dispatched because the Richmond Police Department knew that the search would be fruitless.

The data further suggests that canines have proved to be invaluable in building searches. The canine's acute sense of smell, tracking ability, and speed contribute to their success in building searches. In the World of Pants incident, the element of human safety was a key factor in the decision to use canines.

The World of Pants incident, which occurred on December, 21, 1978, involved the Berkeley Police Department and three armed robbers barricaded inside the store on Telegraph Avenue. After the Barricaded Subject-Hostage Negotiation Team failed in all its attempts to communicate with the suspects, the police faced a difficult choice of tactics to make the arrests. With credible reports of one handgun and two knives in the possession of the suspects, rushing the building with officers posed a serious threat to human life, including the lives of the suspects. Under these circumstances, the orderly, controlled use of a dog and handler to apprehend the suspects in a contained space which offered no possible danger to anyone other than the suspects or the dog-handler team was the least harmful, yet effective alternative.

Waiting for the suspects to give themselves up was not a viable alternative, because daybreak was near on a street which has very heavy pedestrian traffic, and the always existent possibility of a desperate break-out of the armed suspects in the midst of hundreds of innocent bystanders who the police would have had great difficulty in keeping out of the area.

The use of gas was considered as a last resort due to the long-term contamination of the building and its contents. Gas was used eventually, however, but only after the dog was unable to flush out the second suspect in an inaccessible crawl space.

This Committee concluded unanimously that under these conditions the careful use of a canine unit, after appropriate review and approval by senior city officials, was the safest, most effective and most humane alternative in apprehending the suspects and ending a dangerous condition on a major, busy street.

The PRC, in its discussion of the World of Pants incident, raised concerns whether the existing policy of totally prohibiting the use of canines may be too restrictive. This Committee notes that the current prudent policy regarding police use of firearms allows the use of deadly weapons in circumstances similar to those proposed below for the use of canines. We think that the use of trained dogs and handler units ought to be available as a non-lethal alternative in such situations. The Policies and Practices Committee has completed its study and makes the following recommendations with the full understanding of, and sensitivity to, community feelings and, above all, the regard for human life.

We recommend that canine units may be used under certain conditions only and that approval is secured by the Berkeley Police Department from the City Manager. Those conditions are:

1. There is a threat to human life.
2. The suspect is reasonably believed to be

PRC Committee on BPD Policies and Practices
BPD Use of Dogs in World of Pants Incident
Page 7

armed with a deadly weapon.

3. The suspect is in a controlled, contained area.
4. Under no circumstances shall canines be used for crowd control.

Submitted by James Louie
for the PRC Committee on
BPD Policies and Practices

DEFINITIONS:

1. **Model Aircraft** - A remote controlled aircraft used by hobbyists, which is manufactured and operated for the purposes of sport, recreation and/or competition.
2. **Unmanned Aircraft (UA)** - An aircraft that is intended to navigate in the air without an on-board pilot. Also called Remote Piloted Aircraft and "drones."
3. **UA Flight Crewmember** - A pilot, visual observer, payload operator or other person assigned duties for a UA for the purpose of flight.
4. **Unmanned Aircraft Pilot** - A person exercising control over an unmanned aircraft during flight.

COMMUNITY ENGAGEMENT:

1. Law enforcement agencies desiring to use UA should first determine how they will use this technology, including the costs and benefits to be gained.
2. The agency should then engage their community early in the planning process, including their governing body and civil liberties advocates.
3. The agency should assure the community that it values the protections provided citizens by the U.S. Constitution. Further, that the agency will operate the aircraft in full compliance with the mandates of the Constitution, federal, state and local law governing search and seizure.
4. The community should be provided an opportunity to review and comment on agency procedures as they are being drafted. Where appropriate, recommendations should be considered for adoption in the policy.
5. As with the community, the news media should be brought into the process early in its development.

SYSTEM REQUIREMENTS:

1. The UA should have the ability to capture flight time by individual flight and cumulative over a period of time. The ability to reset the flight time counter should be restricted to a supervisor or administrator.
2. The aircraft itself should be painted in a high visibility paint scheme. This will facilitate line of sight control by the aircraft pilot and allow persons on the ground to monitor the location of the aircraft. This recommendation recognizes that in some cases where officer safety is a concern, such as high risk warrant service, high visibility may not be optimal. However, most situations of this type are conducted covertly and at night. Further, given the ability to observe a large area from an aerial vantage point, it may not be necessary to fly the aircraft directly over the target location.
3. Equipping the aircraft with weapons of any type is strongly discouraged. Given the current state of the technology, the ability to effectively deploy weapons from a small UA is doubtful. Further, public acceptance of airborne use of force is likewise doubtful and could result in unnecessary community resistance to the program.
4. The use of model aircraft, modified with cameras, or other sensors, is discouraged due to concerns over reliability and safety.

OPERATIONAL PROCEDURES:

1. UA operations require a Certificate of Authorization (COA) from the Federal Aviation Administration (FAA). A law enforcement agency contemplating the use of UA should contact the FAA early in the planning process to determine the requirements for obtaining a COA.
2. UA will only be operated by personnel, both pilots and crew members, who have been trained and certified in the operation of the system. All agency personnel with UA responsibilities, including command officers, will be provided training in the policies and procedures governing their use.
3. All flights will be approved by a supervisor and must be for a legitimate public safety mission, training, or demonstration purposes.
4. All flights will be documented on a form designed for that purpose and all flight time shall be accounted for on the form. The reason for the flight and name of the supervisor approving will also be documented.
5. An authorized supervisor/administrator will audit flight documentation at regular intervals. The results of the audit will be documented. Any changes to the flight time counter will be documented.
6. Unauthorized use of a UA will result in strict accountability.
7. Except for those instances where officer safety could be jeopardized, the agency should consider using a "Reverse 911" telephone system to alert those living and working in the vicinity of aircraft operations (if such a system is available). If such a system is not available, the use of patrol car public address systems should be considered. This will not only provide a level of safety should the aircraft make an uncontrolled landing, but citizens may also be able to assist with the incident.
8. Where there are specific and articulable grounds to believe that the UA will collect evidence of criminal wrongdoing and if the UA will intrude upon reasonable expectations of privacy, the agency will secure a search warrant prior to conducting the flight.

IMAGE RETENTION:

1. Unless required as evidence of a crime, as part of an on-going investigation, for training, or required by law, images captured by a UA should not be retained by the agency.
2. Unless exempt by law, retained images should be open for public inspection.



INTERNATIONAL ASSOCIATION OF CHIEFS OF POLICE

AVIATION COMMITTEE

Recommended Guidelines for the use of Unmanned Aircraft

BACKGROUND:

Rapid advances in technology have led to the development and increased use of unmanned aircraft. That technology is now making its way into the hands of law enforcement officers nationwide.

We also live in a culture that is extremely sensitive to the idea of preventing unnecessary government intrusion into any facet of our lives. Personal rights are cherished and legally protected by the Constitution. Despite their proven effectiveness, concerns about privacy threaten to overshadow the benefits this technology promises to bring to public safety. From enhanced officer safety by exposing unseen dangers, to finding those most vulnerable who may have wandered away from their caregivers, the potential benefits are irrefutable. However, privacy concerns are an issue that must be dealt with effectively if a law enforcement agency expects the public to support the use of UA by their police.

The Aviation Committee has been involved in the development of unmanned aircraft policy and regulations for several years. The Committee recommends the following guidelines for use by any law enforcement agency contemplating the use of unmanned aircraft.

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Canon

Fighting fire with data, spacecraft, drones

By Amy Gehran, Special to CNN

updated 9:37 AM EDT, Thu July 26, 2012 | Filed under: Innovations

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Unmanned Aerial Vehicles like this one allow fire departments to fight flames from a distance in real-time.

STORY HIGHLIGHTS

Firefighters have new technology to put out flames before they spread

Tech like infrared sensors isn't new, but greatly improved by the Internet

Planes allow for remote monitoring of wildfire situations, drones used in catastrophes

Organizations like NASA and NOAA are collaborating to monitor nature from space

Editor's note: Amy Gehran writes about mobile tech for CNN.com. She is a writer and media consultant based in Boulder, Colorado, whose blog, Contentious.com, explores how people communicate in the online age.

(CNN) — Wildfires are fast-moving targets, so one of the most important weapons firefighting teams can have is timely, precise information about where the fire is, where it's likely to spread and what's in its path.

In the past couple of years, firefighters have gained a significant advantage: aircraft equipped with heat-detecting infrared sensors and special communication equipment now can relay to firefighting teams on the ground, in minutes, a fire's precise location, as well as where new "hotspots" are cropping up, even before they burst into visible flames.

"When I was an incident commander, I would have killed for this kind of data," said Russ Johnson, the director of public safety and homeland national security for Earl, one of the world's leading geographic information companies. In past decades he commanded operations to fight major wildfires, including the massive Yellowstone wildfire of 1988 which scorched about 1.2 million acres.

Monitoring wildfires with infrared sensors from aircraft isn't new, but



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the level of detail and speed with which this data gets transmitted to firefighting teams has been revolutionized.

"Those aircraft used to have to fly at night, because you couldn't gather good thermal data during daylight hours," Johnson said. "Then you'd have to wait for the plane to land, and then for the thermal imagery to be processed. If we were lucky, we'd get that information on printed maps by 4 or 5 in the morning — just maybe in time to brief firefighters before they went out on the line.

"Today those flights can happen in daylight with vastly improved accuracy, and incident commanders get that data electronically in two minutes on a computer-based map. We now have accurate, almost real-time situational awareness on the spot. That makes all the difference."

Wildfires generally have a perimeter marked by an advancing line of flame. But burning debris gets sucked up into the column of hot air over the fire and deposited ahead of the fire line, often causing new spot fires where they land, up to half a mile away. These hotspots also can be caused by burning debris rolling downhill on a steep slope. Left unchecked, new hotspots can smolder invisibly for hours or days.

"Incident commanders and emergency responders who are managing fires need to make decisions on where to focus air drops of fire retardants and other resources," Johnson said. "With this new hotspot information, all of a sudden I know: down there in that canyon, not visible yet, there's a hotspot. So let's divert some air assets to hold it while it's still small and later deploy firefighters there. That's so much better than discovering the hotspot only when it busts out of a canyon, when it's strong and harder and more dangerous to fight."

How does this data get to firefighting operations so fast? Generally it's transmitted over the Internet (via broadband or wireless carrier networks) on a secure website, which decision-makers and emergency responders can access via computers or smartphones. But where a direct connection to these conventional networks isn't available, that data can travel the "last mile" by packet radio, a technology long used by amateur radio operators.

Meanwhile, brand new technology is also having an impact on fighting wildfires.

Unmanned aircraft — sometimes called "drones" — also are starting to play a bigger role in fighting wildfires. According to Aero-News Network, as of June the Federal Aviation Administration had authorized nearly 60 private and government entities to operate unmanned aircraft systems in domestic airspace for many purposes, including fighting wildfires.

In the latest issue of Earth Imaging Journal, Thomas Zajkowski, a remote sensing specialist with the U.S. Forest Service Remote Sensing Applications Center, explained that in addition to carrying sensors, drones also can help form a data transmission network to quickly transmit thermal imagery and other information to firefighting operations.

But so far, firefighting reconnaissance drones aren't commonplace. Johnson said they've been used mainly "when fires get politically visible. Once a fire becomes catastrophic, they turn the drones loose to collect information and data."

That's because it's complicated to work drones into firefighting procedures, especially for managing aircraft and air space over fire areas.

Johnson explained, "When there's a wildfire, emergency airspace gets declared. This restricts all aircraft near the incident. Procedures for managing drones along with air tankers and other aircraft would



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